

General Information Letter: No credit is allowed for taxes paid to another state on compensation "paid in this State" under IITA Section 304(a)(2)(B).

May 20, 2005

Dear:

Your letter dated May 11, 2005, to Annie Braido of the Department's Problems Resolution Division has been forwarded to me for consideration. In your letter, you state that Mr. Zs' original Form W-2 overstated his Illinois wages because Mr. Z maintains offices in both CITY1, Illinois and CITY2, California. During 2003, Mr. Z frequently traveled to California during 2003 to work at the CITY2 office and the work he performed in California was not "incidental to" the work he performed in Illinois. You assert that Mr. Zs' Illinois compensation should be determined by multiplying his total compensation by a fraction equal to the number of days he worked in Illinois, divided by the total number of days he worked during the year.

Section 601(c)(3) of the Illinois Income Tax Act (35 ILCS 5/601) allows an Illinois resident a credit for taxes paid to another state on income that is taxable by both Illinois and the other state. That subsection also provides, in part:

For purposes of this subsection, no compensation received by a resident which qualifies as compensation paid in this State as determined under Section 304(a)(2)(B) shall be considered income subject to tax by another state or states.

Section 304(a)(2)(B) of the Illinois Income Tax Act (35 ILCS 5/304) provides:

Compensation is paid in this State if:

- (i) The individual's service is performed entirely within this State;
- (ii) The individual's service is performed both within and without this State, but the service performed without this State is incidental to the individual's service performed within this State; or
- (iii) Some of the service is performed within this State and either the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is within this State, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

As you can see, there is no provision in this statute for allocating compensation by the working days formula you used. If, as you say, Mr. Zs' work in CITY2 is not merely incidental to his work in CITY1, then the determination of whether his compensation is paid in this state must be made pursuant to subparagraph (iii). Because Mr. Z lives in Illinois and works in Illinois the greater portion of the time, it would appear that the CITY1 office is his base of operations or, perhaps, the place from which his work is directed or controlled. All of his compensation would therefore be treated as paid in this

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State. It certainly seems unlikely that his base of operations or the place from which his work is directed or controlled is in California.

Accordingly, your letter does not provide a basis for allowing Mr. Z credit for taxes paid to California on his compensation. If you have any questions, I can be reached at (217) 524-3951.

Sincerely,

Paul S. Caselton

Deputy General Counsel – Income Tax